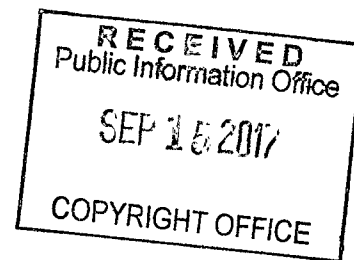


Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.



**DISTRIBUTION OF CABLE ROYALTY
FUNDS**

**CONSOLIDATED PROCEEDING
NO. 14-CRB-0010-CD (2010-13)**

WRITTEN REBUTTAL STATEMENT OF PUBLIC TELEVISION

Pursuant to Section 351.11 of the rules of the Copyright Royalty Judges (“Judges”), 37 C.F.R. § 351.11, and the Judges’ Order dated July 21, 2016, the Public Television Claimants (“Public Television”), through their representative Public Broadcasting Service (“PBS”), hereby submit this written rebuttal statement in the above-captioned proceeding to distribute the cable royalty funds for the years 2010, 2011, 2012, and 2013.

Public Television’s written rebuttal statement contains the joint testimony of Linda McLaughlin and David Blackburn, who also submitted testimony as part of Public Television’s amended written direct statement in this proceeding. Ms. McLaughlin and Dr. Blackburn are economists affiliated with National Economic Research Associates, Inc. Ms. McLaughlin has spent over 40 years researching the entertainment and media industries, including analyzing marketplace prices paid for copyright licenses, reasonable rates for such licenses, and distribution of fees to copyright owners. Dr. Blackburn has a Ph.D. in Economics from Harvard University and has researched and analyzed markets for and valuations of copyrights, including in film, television, and music. Both have testified before the Copyright Royalty Judges in prior proceedings.

In their prior testimony in this proceeding, Ms. McLaughlin and Dr. Blackburn explained that the Bortz survey submitted by the Joint Sports Claimants excluded from its survey sample all cable systems that carried only distant public television or Canadian broadcast

stations. They calculated the valuations that the Bortz surveys likely would have found if the Bortz survey samples had included those systems—what they (and the Judges in the 2004–2005 proceeding, who adopted that methodology as their “starting point”¹) refer to as the “augmented” Bortz survey.

In this written rebuttal statement, Ms. McLaughlin and Dr. Blackburn’s testimony explains that in all four years at issue in this proceeding, even the *augmented* Bortz survey suffers from substantial bias that understates the value of Public Television programming. Ms. McLaughlin and Dr. Blackburn show that the sample of cable systems eligible to participate in the Bortz survey, even when “augmented,” carried about 5 percent less distant Public Television programming than the universe of cable systems in each year from 2010 through 2013. More significantly, they demonstrate that each year only slightly more than half of the eligible cable systems actually completed the Bortz surveys, and that the augmented Bortz survey *respondents’* carriage of Public Television programming was *22 percent less* than the universe of cable systems. Ms. McLaughlin and Dr. Blackburn testify that the Bortz surveys’ significant participation bias, or “non-response” bias, may partially explain why the Bortz survey—unlike the other measures of marketplace value submitted by the other parties in this proceeding—fails to show an increase in the value of Public Television programming that is greater than merely the increase in cable systems’ carriage of Public Television.

¹ See Distribution Order, *In re Distribution of the 2004 and 2005 Cable Royalty Funds*, Docket No. 2007-3 CRB CD 2004–2005, at 27 (June 29, 2010).

September 15, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Dustin Cho, hereby certify that on this 15th day of September, 2017, a copy of the Written Rebuttal Statement of Public Television was served via eCRB and sent by Federal Express overnight delivery to the following parties:

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Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In re

**DISTRIBUTION OF CABLE ROYALTY
FUNDS**

**CONSOLIDATED PROCEEDING
NO. 14-CRB-0010-CD (2010–13)**

Rebuttal Testimony of

Linda McLaughlin

and

David Blackburn

September 15, 2017

I. Qualifications

A. Linda McLaughlin

I am an applied microeconomist and an Affiliated Consultant at National Economic Research Associates, Inc. ("NERA"). My initial testimony in this proceeding provides additional background information.¹

B. David Blackburn

I am an applied microeconomist and Director for NERA, an economic consulting firm. My initial testimony in this proceeding provides additional background information.²

II. Assignment and Summary of Opinions

Counsel for the Public Broadcasting Service has asked us to assess the representativeness of the Bortz surveys with respect to distant Public Television ("PTV") carriage in light of data produced by the Joint Sports Claimants in discovery. We reserve the right to supplement our opinions should additional information or testimony become available to us.

In our previous report, we computed the values that the Bortz surveys likely would have found had they not excluded from the original samples cable operators that carried only distant PTV and/or Canadian signals, which we refer to as the "augmented" Bortz surveys.³ Based on our further analysis to date, we conclude that the augmented Bortz surveys' samples of cable systems for the 2010-13 period have only slightly less distant PTV carriage than the universe of all systems: five percent less. However, not all of those selected to be surveyed actually responded; as we explain below, the actual respondents to the augmented Bortz survey have considerably lower distant PTV carriage than the universe of cable systems: 22 percent less. This shows participation bias with respect to PTV carriage in the augmented Bortz surveys.

¹ Testimony of Linda McLaughlin and David Blackburn, In re Distribution of Cable Royalty Funds, Consolidated Proceeding No. 14-CRB-0010-CD (2010-13), April 17, 2017 ("McLaughlin-Blackburn Testimony").

² McLaughlin-Blackburn Testimony.

³ McLaughlin-Blackburn Testimony p. 14.

III. Participation Bias in the Bortz Survey

As we explained in our original report, the Bortz survey, as presented by James Trautman, begins each year with a random sample of cable systems. It then explicitly excludes from the “eligible” sample those systems that carry distant signals only in the PTV and/or Canadian category. A little more than half of those in the eligible sample responded.⁴ The cable operator respondents were asked how they would allocate a fixed budget among the different programming categories based on the distant signals they actually carried in the preceding year. The survey results reflect the collective valuations made by the eligible respondents. Had the omitted systems carrying only PTV and/or Canadian distant signals been included in the eligible sample, they would have been restricted to “allocating the fixed budget” entirely to the category carried. The augmented Bortz results we presented in our original report included these systems, applying the same response rate as those eligible.⁵ We concluded that the augmented Bortz survey showed an increase in PTV value of 31 percent from 2004-05 to 2010-13, which was lower than any other measure of the change in PTV value.⁶

In our initial report, we noted that several large systems carrying distant PTV multicast stations—a major factor underlying the increase in relative PTV carriage—that were eligible to respond to both the Bortz and Horowitz surveys of cable system operator value did not respond to the Bortz surveys but did respond to the Horowitz survey. We suggested that this difference in respondents might explain the reason for the relatively lower Bortz value for PTV programming.⁷ Since our initial report we have further investigated the respondents to the augmented Bortz surveys, based on data produced by the Joint Sports Claimants in discovery.

⁴ Written Direct Testimony of James M. Trautman, Bortz Media & Sports Group, Inc., Cable Operator Valuation of Distant Signal Non-Network Programming, December 22, 2016, pp. 20-21, , *in* Written Direct Statement of the Joint Sports Claimants, vol. 1, tab 1, In re Distribution of Cable Royalty Funds, Consolidated Proceeding No. 14-CRB-0010-CD (2010-13) (“Interviews were completed with between 52 and 57 percent of cable systems included in the sample . . . [R]esponse rates were lower in 2010-13 than the 65 to 68 percent achieved in 2004-05.”).

⁵ McLaughlin-Blackburn Testimony, pp. 13-16.

⁶ McLaughlin-Blackburn Testimony, Chart 8.

⁷ McLaughlin-Blackburn Testimony, p. 17.

The augmented Bortz *sample* for the 2010-13 period has only slightly less distant PTV carriage (15.1 percent) than the universe of all systems (15.8 percent), or 5 percent less.⁸ However, the actual *respondents* to the Bortz surveys, even when similarly augmented, have considerably lower distant PTV carriage (12.4 percent) than both the universe and the augmented sample.⁹ The respondents' carriage of PTV distant signals was 22 percent less than that of the universe of systems. See Table 1.¹⁰ This shows participation bias with respect to PTV carriage.¹¹

**Table 1: PTV Share of Total Distant Subscriber Instances:
Universe Compared with Augmented Bortz Sample and Respondents**

<u>Period</u>	<u>PTV Share of Total Distant Subscriber Instances</u>			Augmented	Augmented
	<u>Universe</u>	<u>Augmented</u>	<u>Augmented</u>	Sample	Respondents
		<u>Sample</u>	<u>Respondents</u>	Relative to	Relative to
				<u>Universe</u>	<u>Universe</u>
	(1)	(2)	(3)	(2)/(1)-1	(3)/(1)-1
				(4)	(5)
2010-1	13.6%	11.5%	9.8%	-16%	-28%
2011-1	16.7%	16.3%	11.4%	-3%	-32%
2012-1	15.9%	15.6%	13.9%	-2%	-13%
2013-1	16.9%	16.1%	14.1%	-5%	-16%
2010-1 to 2013-1	15.8%	15.1%	12.4%	-5%	-22%

⁸ The augmented Bortz sample includes the Bortz "final eligible" sample plus the systems in the original Bortz sample that were eliminated because they imported only PTV and/or Canadian stations.

⁹ The augmented Bortz respondents include the actual Bortz respondents plus the omitted systems that import PTV and/or Canadian stations weighted by the Bortz response rate.

¹⁰ Data from Cable Data Corporation ("CDC") based on survey information provided by the Joint Sports Claimants.

¹¹ For a general discussion of the problems with participation (or non-response) bias, see Shari Seidman Diamond, "Reference Guide on Survey Research," in *Reference Manual on Scientific Evidence*, Third Edition, Washington, DC: Federal Judicial Center/National Academy of Sciences, The National Academies Press, pp. 359, 383-85.

Because we initially found that several large systems carrying distant PTV stations did not respond to the Bortz surveys but did respond to the Horowitz survey, and now have discovered participation bias in the augmented Bortz surveys, we similarly decided to check for participation bias in the Horowitz survey. We previously concluded that the Horowitz survey showed an increase in PTV value of 109 percent from 2004-05 to 2010-13.¹² Based on data produced by the Program Supplier Claimants in discovery, we found that the respondents to the Horowitz survey have higher carriage of PTV distant signals (18.6 percent) than the universe of all systems (15.8 percent).¹³ The Horowitz survey's respondents' participation bias with respect to carriage of PTV distant signals was in the opposite direction compared to the augmented Bortz respondents, and slightly less biased (18 percent overrepresentation by the Horowitz respondents versus 22 percent underrepresentation by the augmented Bortz respondents).¹⁴

The augmented Bortz surveys' participation bias may partially explain why, unlike other measures of value (including the Horowitz survey), the augmented Bortz surveys do not show an increase in PTV value that is greater than merely the increase in PTV carriage. In our initial report, we concluded that the relative increase in carriage of distant PTV stations in 2010-13 indicates that the relative marketplace value of distant PTV stations has increased. Based on changes in other measures supplied by experts for other parties, including cable system operator ("CSO") survey value results and CSO econometric value results, we further concluded that the relative share of distant PTV programming grew at least approximately as much, and in most cases substantially more, than PTV's increase in carriage.¹⁵ To the extent that these other CSO values for PTV programming increased more than the carriage of that programming, they show an increase in the per-unit value of the PTV programming and, thus, a larger increase in value than the increase in carriage.

¹² McLaughlin-Blackburn Testimony, Chart 8.

¹³ Data from CDC based on data provided by the Program Supplier Claimants in discovery and universe data in Table 1 above.

¹⁴ On a year by year basis, the respondents to the Horowitz survey have higher PTV carriage by about 18 percent in 2010, about 25 percent in 2011, about 5 percent in 2012, and about 17 percent in 2013. (Data from CDC based on data provided by the Program Supplier Claimants in discovery and universe data in Table 1 above.)

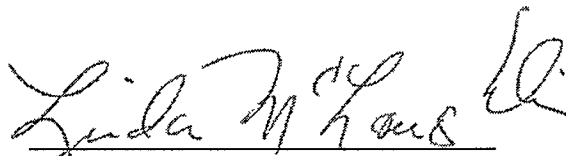
¹⁵ McLaughlin-Blackburn Testimony, pp. 2-3.

While three of the measures of CSO value supplied by experts for other parties (the Horowitz survey and the Crawford and Israel econometric results) show a larger increase in the value of distant PTV programming than the increase in carriage of distant PTV programming, the augmented Bortz surveys show approximately the same increase in value as in carriage.¹⁶ The participation bias as to PTV carriage in the 2010-13 augmented Bortz survey may explain why it does not show a greater increase in *its respondents'* value of PTV programming than *the universe's* increase in PTV carriage: its respondents are not carrying PTV as much as the universe is. In contrast, the Horowitz survey shows an increase in distant PTV programming value even relative to its respondents' higher carriage of distant PTV programming and is generally more consistent with other measures of CSO valuation.

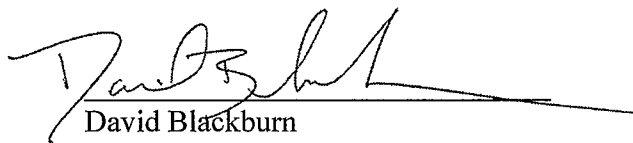
DECLARATION

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of September, 2017


Linda McLaughlin

Executed this 15th day of September, 2017


David Blackburn

¹⁶ McLaughlin-Blackburn Testimony, Chart 8.